THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO
AND
THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.18450 of 1993

ORDER: (Per Hon'ble Sri Justice T.CH. Surya Rao)

The petitioner seeks a writ of *Certiorari* to quash the judgment dated 10-09-1993 passed in L.G.C. No.79 of 1991 by the learned Special Court under A.P. Land Grabbing (Prohibition) Act 1982 (for short 'the Act'), Hyderabad.

The writ petitioner and two others are the respondents in L.G.C. No.79 of 1991 filed by the State, represented by the Revenue Divisional Officer, Hyderabad Division. L.G.C. No.79 of 1991 was filed seeking eviction of the respondents from the land covered by Survey Nos.76 and 77 of Thokatta Village. It was the case of the petitioner-State that the land, in an extent of Ac.1.25 guntas, covered by Survey Nos.76 and 77 was classified as Government land and that the respondents had illegally encroached upon the said land. The 1st respondent constructed rooms in a portion of the petition schedule land. The 2nd respondent encroached upon an extent of 232 square yards in Survey No.76 and 215 square yards in Survey No.77 and the 3rd respondent encroached upon the land, in an extent of 890 square yards, in Survey No.76. The structures

erected on the land were unauthorized and illegal constructions. The State also sought for compensation of Rs.47,19,000/- for wrongful possession and for mesne profits quantifying the same at Rs.57,48,000/- for the last 10 years with interest at 12% per annum.

The petition was resisted by the respondents 1, 2 and 3 by filing individual counters. It was the case of the 1st respondent that the land measuring 39 guntas in Survey No.76 and Ac.1.01 gunta in Survey No.77 corresponding to old Survey Nos.119 and 120 of Thokatta Village was not the Government land. Himself, his mother and sister succeeded to the said property from his father and the said land had been in occupation of their family members since their ancestors for more than 50 years. The name of
Narsi Reddy, who is his paternal grandfather was recorded as Khathadar of the petition schedule lands in Sethwar of 1339 Fasli.
His name was also reflected in the Vasul Baki of 1339 Fasli.
Thus the petition schedule land was in possession of Narsi Reddy till his death and after his death, Malla Reddy was in possession of it,
till his death on 05-12-1979 and after the death of Malla Reddy,
the 1st respondent, his mother and sister succeeded to the said property. They developed the property by spending huge amounts and made it fit for cultivation.

Similarly, the land in Survey No.77 was an inam land known as Laxmikantham Inam, as per the entries in Vasul baki of the year 1339

Fasli, and the name of the Inamdar was shown as Vapra Laxmikantham and the name of the grandfather of the

1st respondent was shown as Khathadar in the Sethwar of the said year. The father of the 1st respondent, who became entitled to occupancy rights after abolition of inams, made representation to the Government for grant of patta, which had been pending consideration by the Government. Pending consideration of the said request, it was proposed by the Government to lease out the said land and the same was accepted by the father of the

1st respondent without prejudice to his rights, but in the meanwhile, the Government issued notice under Section 7 of the A.P. Land Encroachment Act, 1905 (for short 'the Encroachment Act') to the father of the 1st respondent in the year 1978 for which, he gave a reply. Without conducting any enquiry, an order under Section 6 of the Encroachment Act was passed on 23-03-1983 by which date, the father of the 1st respondent died. Assailing the said order,

the 1st respondent filed W.P. No.2496 of 1983 but it was disposed of with a direction to file a suit. The 1st respondent, therefore, filed O.S. No.4115 of 1988 on the file of the I Assistant Judge, City Civil Court, Secunderabad against the Government for perpetual injunction.

A *status quo* order was passed in the said suit. It was, further, the case of the 1st respondent that the petition schedule lands were patta lands and they were wrongly shown as Poramboke and

Kharij Khatha lands in the revenue records. The case of the respondents 2 and 3 is quite unnecessary to be stated in this writ petition, inasmuch as, they have not filed any separate writ petitions nor joined in this writ petition along with the 1st respondent.

On the basis of the pleadings, the Special Court framed the following issues.

1. *"Whether the applicant is the owner of the petition schedule property?*
2. *Whether the rival title set up by 1st respondent is true and valid?*
3. *Whether respondents 1 to 3 are land grabbers within the definition of the Act?*
4. *To what relief?"*

At the time of enquiry, three witnesses were examined and Exs.A-1 to A-36 were got marked on the side of the applicant.

Equally, number of respondents were examined and Exs.B-1 to B-11 were got marked on the side of the respondents. Ex.C-1 was marked on the side of the Court. Appreciating the evidence,

both oral and documentary adduced on either side, the learned Special Court was of the view that the applicant was the owner of the petition schedule land and the rival title set up by the respondents was false. Consequently, the Special Court found that the 1st respondent was a land grabber and directed eventually his eviction from the land in question.

Assailing the said order, as aforesaid, the writ petitioner seeks to file the present writ petition. Smt. A. Anasuya learned counsel for the writ petitioner represents that the entries in some of the revenue records filed on the side of the Government clearly show that the grandfather of the 1st respondent was Khatadar. It is further represented that having regard to the long standing occupation, the respondent cannot be said to have committed an act of land grabbing, therefore, the application filed by the Government should have been dismissed.

Per contra, the learned Government Pleader for Assignments represents that except the entries in Exs.B-9 and B-24,
all other revenue records show that the land in question was Sarkari land, therefore the finding that the Government was the owner of the land, cannot be assailed. It is further represented that mere occupation of the Government land, without any entitlement thereto, can be considered as an act of land grabbing.

Before adverting to the rival contentions, it may be mentioned, at the out set, that this Court is not sitting in appeal over the judgment passed by the Special Court under the Act.
The instant writ petition filed seeking writ of *Certiorari,* we are aware of the limitations within which the extraordinary jurisdiction shall have to be exercised by this Court.

"Ex.B9, which is an extract of Sethwar,
wherein the name of Narsi Reddy is said to have

been entered in Khathadar's column, which entries are also found in Ex.A24, which is the original of Ex.A9, in respect of both the petition-schedule survey numbers, the entries in Exs.A15, A15-A, A15-B, A16, A16-A, A16-B, A17 to A23 and A26 and A28 would falsify the said entries in Exs.B9 and A24."

The Special Court, *inter alia,* in the judgment at page 21, while discussing about Ex.B-9 and Ex.A-24 observed that though the name of Narsi Reddy as pattadar was found in Ex.A-24 in respect of both the petition schedule survey numbers, the entries in Exs.A-15, A-15A, A-15B, A-16, A-16A, A-16B, A-17 to A-23, A-26 and A-28 would falsify Exs.B-9 and A-24, which is original of Ex.B-9. In the process, the Special Court placed reliance upon the evidence of P.W.2, who deposed about the corrections seem to have been appearing in the Ex.B-9 and Ex.A-24. Again, the Special Court placed much reliance upon Exs.A-12 and A-13, true extracts of the applications, said to have been filed by the 1st respondent before the Thasildar, Hyderabad. Eventually, as aforesaid, the Special Court has come to the conclusion that the land in question as the Government land.

No independent title has been claimed by the 1st respondent in this case except pleading that the name of his grandfather was shown as Kahathadar in the Sethwar and since the time of his grandfather, successfully the family members have been in possession and enjoyment of the said land for more than 50 years. Even the plea of

adverse possession to prescribe title to himself has not been taken by him, *inter alia,* in the counter. Presumably, the 1st respondent might be under the impression that his long standing possession for a period of 50 years would falsify the plea of the Government that he committed an act of land grabbing.

It emerges clearly from the record that the notice under Section 7 of the Encroachment Act was issued followed up by a notice for summary eviction under Section 6 of the said Act against the

1st respondent. He then filed a suit against the State assailing the eviction order under Section 6 of the Encroachment Act.

In the meanwhile, it appears that the State filed L.G.C. No.79 of 1991 before the Special Court and in view of the same, presumably the 1st respondent did not pursue the suit. The fact remains that the suit is not pending now and the summary eviction order passed under Section 6 of the Encroachment Act has not been set aside.

The record further shows that the 1st respondent has been shown as Sivaijamedar and tax was levied on him for the disputed lands and Exs.A-12 and A-13 representations were sent to the Government by the father of the 1st respondent where under the father of the

1st respondent himself requested the Government to grant patta for the disputed land adverting to lease documents. The Special Court concluded eventually that the Government was the owner of the land and the rival title as set up by the 1st respondent, was false.

We have gone through the judgment of the Special Court and given our anxious consideration to the material available on record. Exercising extraordinary jurisdiction under Article 226 of the Constitution of India we are afraid that we cannot re-appreciate the evidence so as to see that the findings and the conclusions reached by the Special Court are based upon the necessary evidence. No error of jurisdiction by accepting irrelevant evidence, or omitting to consider relevant evidence by the Special Court has been brought to our notice. In the absence of any such illegality or error of jurisdiction that is said to have been committed by the Special Court, while disposing of the application, this Court cannot interfere with the conclusions reached by the Special Court on the evidence adduced on either side. The Apex Court in ***N. SRINIVASA RAO v. SPECIAL COURT UNDER A.P. LAND GRABBING (PROHIBITION) ACT & OTHERS***[1] in para 47 held as under:

> *"In our view, in a proceeding before the Special Court the only issue which fall for decision is whether there has been an act of land grabbing as alleged and who is the guilty party. The Special Court has no jurisdiction to decide question relating to acquisition of title by adverse possession in a proceeding under the Act as the same would fall within the domain of the civil courts. The learned Special Judge apparently traveled beyond the jurisdiction vested in him under the 1982 Act in deciding that even if the provisions of Section 47 of the Act was a bar to transfer without the sanction of*

the Tahsildar, the occupants of the land had perfected their title thereto by way of adverse possession."

Having regard to the said pronouncement of the Apex Court, the jurisdiction of the Special Court is obviously limited, and lies in a narrow compass, the Special Court can adjudicate only the issue as to whether there has been an act of land grabbing as alleged and who is the guilty party. When the jurisdiction of the Special Court is thus limited, we are of the considered view that it is still open to the 1st respondent to agitate before the competent Civil Court over the disputed land, in which event, the Civil Court can go deep into all the controversies raised before us in the instant writ petition and even as a matter of fact, when the remedy of filing comprehensive civil suit is available to the writ petitioner, we are fortified in our earlier view that it is not a case where this Court can interfere with the findings reached by the learned Special Court while exercising its jurisdiction, which is now held to be a limited one.

At this juncture, the learned counsel for the writ petitioner seeks to contend that even the Special Court can go into the question of right, title or interest over the disputed land as mandated under Section 8 of the Act. A perusal of Section 8 of the Act shows that it is within the competence of the Special Court to adjudicate the ownership and title to, or lawful possession of, the land alleged to have been grabbed and determine the question as to the title and lawful ownership. However,

the Apex Court in ***N. Srinivasa Rao's case*** Supra has taken a view that the jurisdiction of the Special Court is limited. Though Section 8 has not been considered by the Supreme Court, notwithstanding the same, this Court is bound by the said judgment. Therefore, we are of the considered view that the writ petition can be disposed of without interfering with the order and decretal order passed by the learned Special Court leaving it open to the 1st respondent to agitate about the title over the disputed land before any competent Civil Court by filing a comprehensive civil suit. It may be mentioned that notwithstanding any observations made by this Court, *inter alia,* in the order, which may touch upon the merits of the case, the Civil Court, in the event of a civil suit being filed, may adjudicate the matter on its own merits uninfluenced by the said observations if any.

In the result, the Writ Petition is dismissed in terms of the observations made *inter alia* in the above order. Under the circumstances, we direct both the parties to bear their respective costs.

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T.CH. SURYA RAO, J

Date: 16-06-2006

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G. CHANDRAIAH,

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[1] 2006 AIR SCW 1740